

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE DEPARTMENT OF NATURAL RESOURCES

In the Matter of the Appeal of the
Invasive Species/Infested Waters
Citation Issued to Brian William
Stuckey, Citation No. 201381

**FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND RECOMMENDATION**

This matter came before Administrative Law Judge Ann O'Reilly for a prehearing telephone conference call on July 10, 2013, pursuant to a Notice of Prehearing Conference and Notice of Hearing that was issued on June 28, 2013. Conservation Officer Bret Grundmeier appeared on behalf of the Minnesota Department of Natural Resources (DNR). Appellant Brian Stuckey (Appellant or Stuckey) appeared on his own behalf without counsel.

During the telephone conference on July 10, 2013, the parties agreed to conduct a formal hearing on the citation. Sworn testimony was taken at the hearing. The parties submitted written post-hearing argument, along with photographs, as part of the record. The parties agreed that the Administrative Law Judge could make a recommendation based on the record created during the hearing, as well as the post hearing submissions. The record closed on July 19, 2013, the deadline for filing post-hearing submissions.

STATEMENT OF THE ISSUE

The issue presented in this matter is whether Appellant was properly issued a civil citation under Minn. Stat. §§ 84D.10, subd. 4(b) and 84D.13, subd. 5(a)(6) for failing to have drain plugs removed or open when transporting water-related equipment.

SUMMARY OF RECOMMENDATION

The Administrative Law Judge concludes that the DNR has established by a preponderance of the evidence that Appellant committed a violation of Minn. Stat. § 84D.10, subd. 4(b), and, therefore, recommends that the Commissioner affirm the citation and fine.

Based on the proceedings herein, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. On May 26, 2013, Conservation Officer Bret Grundmeier was parked at the Cross Lake public access to the Snake River in Pine County, Minnesota.¹ Officer Grundmeier was at the landing to observe the boats being launched or removed at the access, and to educate boat owners of the dangers of transporting invasive aquatic species² into Minnesota waters.³

2. Officer Grundmeier was particularly interested in ensuring that boats being launched into or removed from the lake follow all conservation requirements to ensure that aquatic invasive species not be transported by water-related equipment into or out of the lake.⁴ Certain aquatic invasive species, such as Zebra Mussels and Eurasian Water Milfoil, are transportable in the bilge water of watercraft.⁵ Thus, to ensure invasive species are not transported from one body of water to another, Minnesota state law requires that bilge drain plugs on boats be open or removed when the boat is being transported, so as to let all water drain from the boat before the boat is launched in other waters.⁶

3. At approximately 11:30 a.m. on May 26, 2013, Officer Grundmeier observed a pickup truck hauling a trailer containing a boat, traveling northbound on County Road 61, adjacent to the public access.⁷ The pickup turned into the parking lot of the public landing from County Road 61 and drove directly in front of Officer Grundmeier's squad car.⁸

4. Officer Grundmeier's squad car was approximately 10 feet from the trailered boat as it passed by, and the officer was able to view the boat from the side as it passed.⁹ When the pickup drove past, Officer Grundmeier observed that the bilge plug on the back of the boat was not removed.¹⁰

5. Officer Grundmeier approached the pickup and identified the driver as Appellant Brian Stuckey.¹¹

¹ Testimony of Bret Grundmeier.

² "Invasive species" are defined as "[N]onnative species that: (1) causes or may cause economic or environmental harm or harm to human health; or (2) threatens or may threaten natural resources or the use of natural resources in the state." Minn. Stat. § 84D.01, subd. 9a (2012).

³ Test. of B. Grundmeier.

⁴ *Id.*

⁵ *Id.*

⁶ *Id.* See also, Minn. Stat. § 84D.10, subd. 4(b) (2012).

⁷ Test. of B. Grundmeier.

⁸ *Id.*

⁹ *Id.*; See also, post-hearing rebuttal submission sent by electronic mail by Officer Grundmeier on July 12, 2013 (Grundmeier Email).

¹⁰ *Id.*; Test. of B. Grundmeier.

¹¹ Test. of B. Grundmeier.

6. Officer Grundmeier maintained constant visual contact of the boat from its entry into the public landing until the time that he issued the citation.¹² Officer Grundmeier did not see anyone insert the bilge plug into the boat while in the landing.¹³

7. Officer Grundmeier advised Stuckey that it was unlawful to transport a boat if the bilge plug is not open or removed.¹⁴ Stuckey explained to Officer Grundmeier that he had just come from his home in Pine City and that he did not know it was necessary to remove the plug if he was coming from his home.¹⁵

8. Pictures of the Starcraft fishing boat show that the bilge hole/plug is located at the very bottom of the transom of the boat, directly behind the motor.¹⁶ The bilge drain hole is located between the livewell discharge hole (on the port side of the boat) and the freshwater intake hole (on the starboard side of the boat).¹⁷ Neither the livewell discharge hole nor the freshwater intake hole accepts plugs.¹⁸

9. Based upon his observations, Officer Grundmeier issued Stuckey a Civil Citation, No. 201381, for failing to open or remove a drain plug while transporting water-related equipment. The penalty imposed was \$100.¹⁹

10. Stuckey timely appealed the citation and requested that it be withdrawn.²⁰

Based on the Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS OF LAW

1. This matter is properly before the Administrative Law Judge and the Commissioner of Natural Resources pursuant to Minn. Stat. §§ 14.50, 84D.13, subd. 8, and 116.072, subd. 6.

2. Minnesota Statutes section 84D.10, subdivision 4(b) requires that drain plugs, bailers, valves, or other devices used to control the draining of water from ballast tanks, bilges, and live wells must be removed or opened while transporting water-related equipment. "Water-related equipment" includes boats.²¹

¹² Grundmeier Email.

¹³ *Id.*

¹⁴ *Id.*; Test. of B. Grundmeier.

¹⁵ *Id.*

¹⁶ Exs. 2, 3, and 4.

¹⁷ *Id.*; See also, post-hearing argument submitted by Stuckey via email dated July 11, 2013 (Stuckey Email).

¹⁸ Stuckey Email.

¹⁹ Civil Citation No. 201381, on file and of record in this matter. See also, Minn. Stat. § 84D.13, subd. 5(a)(5).

²⁰ See Letter from Stuckey to Commissioner of Natural Resources, sent May 30, 2013, on file and of record in this matter.

²¹ Minn. Stat. § 84D.02, subd. 18a (2012).

3. DNR Conservation Officers are authorized to issue citations to persons who violate Minn. Stat. § 84D.10, subd. 4(b).²²

4. Pursuant to Minn. Stat. § 84D.13, subd. 8, an appeal of a civil citation shall be brought under the procedures set forth in Minn. Stat. § 116.072, subd. 6, provided that a hearing is requested within 15 days after receipt of the citation.

5. Stuckey filed a timely appeal and request for hearing.

6. At a hearing on a violation of Minn. Stat. ch. 84D, the burden is on the DNR to show by a preponderance of the evidence that the appellant violated the statute cited.²³

7. The DNR has established, by a preponderance of the evidence, that Stuckey violated Minn. Stat. § 84D.10, subd. 4(b), by transporting a boat without opening or removing its drain plug.

8. The Administrative Law Judge, therefore, finds that it is appropriate that the Commissioner affirm Invasive Species Civil Citation No. 201381.

9. The statutorily-prescribed fine for a violation of Minn. Stat. § 84D.10, subd. 4(b) is \$100.²⁴

10. Pursuant to Minn. Stat. § 116.072, subd. 6(c), the Administrative Law Judge may not recommend a change in the amount of the proposed penalty unless the judge determines that, based upon the factors in subdivision 2,²⁵ the amount of the penalty is unreasonable.

11. The Administrative Law Judge finds that the penalty amount of \$100 is not unreasonable.

12. The attached Memorandum provides further explanation of the reasons for these Conclusions and is incorporated herein.

Based on the Conclusions of Law, and for the reasons set forth in the Memorandum below, the Administrative Law Judge makes the following:

²² Minn. Stat. § 84.13 (2012).

²³ Minn. R. 1400.7300, subp. 5 (2012).

²⁴ Minn. Stat. § 84D.13, subd. 5(a)(6) (2012).

²⁵ Minnesota Statutes section 116.072, subdivision 2 (2012), provides that, in determining the amount of penalty, the commissioner may consider: (1) the willfulness of the violation; (2) the gravity of the violation, including damage to humans, animals, air, water, land, or other natural resources of the state; (3) the history of past violations; (4) the number of violations; (5) the economic benefit gained by the person by allowing or committing the violation; and (6) other factors as justice may require, if the commissioner specifically identifies the additional factors in the commissioner's order.

RECOMMENDATION

The Administrative Law Judge recommends that Invasive Species/Infested Waters Civil Citation No. 201381 issued to Brian Stuckey be **AFFIRMED**.

Dated: August 7, 2013

s/Ann C. O'Reilly
ANN C. O'Reilly
Administrative Law Judge

NOTICE

Pursuant to Minn. Stat. § 116.072, subd. 6(e), the Commissioner may not issue a final order until at least five (5) days after receipt of the Report of the Administrative Law Judge. The persons to whom the order is issued may, within those five days, comment to the Commissioner, and the Commissioner will consider the comments. The final order of the Commissioner may be appealed, pursuant to Minn. Stat. §§ 14.63 and 14.69.

MEMORANDUM

In support of his appeal, Stuckey testified that he was at the public access for several minutes preparing his boat for launch when Officer Grundmeier first approached him.²⁶ Stuckey asserts that the bilge hole on his boat is located at the very bottom of the transom, directly behind the motor.²⁷ As a result, Stuckey argues that it would have been impossible for Officer Grundmeier to see the bilge hole when Stuckey drove past him.²⁸

In addition, Stuckey asserts that he transported the boat with the drain plug open and inserted the plug, while at the launch, in anticipation of putting the boat in the water.²⁹ According to Stuckey, he pulled the boat into the landing with its bilge hole open and started to prepare the boat for launch by inserting the plug.³⁰ While he was preparing the boat, Officer Grundmeier approached him and noticed that the plug was inserted.³¹ This, Stuckey asserts, was the first time that Officer Grundmeier could have

²⁶ Testimony of Brian Stuckey.

²⁷ *Id.*; Exs. 2-4.

²⁸ Test. of B. Stuckey.

²⁹ *Id.*

³⁰ *Id.*

³¹ *Id.*

seen the drain hole, as it would not have been visible when he drove by Officer Grundmeier.³²

Stuckey further notes that Officer Grundmeier testified that Stuckey's pickup was a green Ford F150, when, in fact, it is more silver in color.³³ Thus, Stuckey asserts that Officer Grundmeier's recollection and credibility is in question.

The pictures of the boat lend some support to Stuckey's contention that the bilge drain hole is difficult to see because it is located directly behind the boat's motor. Indeed, when standing directly behind the boat and motor, the bilge hole would be difficult to observe. It would, however, be possible to see the bilge hole from the side of the boat when it was driven by on a trailer. This is especially true for a trained conservation officer specifically looking for boats that do not have open drain plugs.

While a casual observer may not readily observe the bilge hole, a conservation officer specifically trained and present at a location to enforce drain plug laws would pay particular attention to this area of the boat as it came into the public access and was driven past the officer. From the side of the boat, the bilge hole would be readily apparent. Officer Grundmeier states that he was approximately 10 feet from the boat as Stuckey drove past, and that Stuckey drove directly in front of his squad car, such that the officer could observe the boat from the side.³⁴ In addition, Officer Grundmeier testified that he immediately exited his squad and approached Stuckey upon Stuckey's arrival into the access.³⁵ During that time, Officer Grundmeier had the boat in continuous view and did not observe anyone, including Stuckey, insert the plug.³⁶

The fact that Officer Grundmeier testified, and that the citation seems to reflect, that Stuckey's pickup truck was a "grn" (green) Ford F150, does not undermine the officer's other testimony. The photograph of the truck submitted by Stuckey is grainy and unclear.³⁷ While it appears silver-like in color, it does have a ting of color that could be considered greenish or gray.³⁸ In addition, the pickup is a Ford 150.

In an appeal of a DNR citation, the burden of proof is on the conservation officer to prove by a preponderance of the evidence that a violation of law occurred.³⁹ A preponderance of the evidence means that it must be established by a greater weight of the evidence.⁴⁰ "It must be of a greater or more convincing effect and ... lead you to believe that it is more likely that the claim...is true than...not true."⁴¹ The

³² *Id.*

³³ *Id.*; Ex. 5. Note that the clarity of Ex. 5 makes it difficult to tell the exact color of the vehicle.

³⁴ Grundmeier Email.

³⁵ *Id.*; Test. of B. Grundmeier.

³⁶ *Id.*

³⁷ Ex. 5.

³⁸ *Id.*

³⁹ Minn. R. 1400.7300, subp. 5.

⁴⁰ 4 Minnesota Practice, CIV JIG 14.15 (2012).

⁴¹ *State v. Wahlberg*, 296 N.W.2d 408, 418 (Minn. 1980).

preponderance of the evidence standard is less than the clear and convincing standard, and less than the proof beyond a reasonable doubt standard used in criminal trials.⁴²

Here, a preponderance of the evidence establishes that Stuckey transported his boat into the public access while its bilge plug was inserted. Therefore, the DNR has met its burden of proving that Stuckey was in violation of Minn. Stat. § 84D.10, subd. 4(b). In addition, the \$100 fine is reasonable.

The enforcement of laws to prevent the spread of aquatic invasive species is important to the state of Minnesota, its waters and natural resources, and to its people and economy. Patrolling public accesses to state waters is one of the best ways the DNR can prevent the spread of invasive species to uninfested waters. While a \$100 fine has a certain “sting” to an individual cited, it is reasonable in relation to the harm that the DNR seeks to prevent. According, it is respectfully recommended that the citation and fine be affirmed.

A. C. O.

⁴² *State v. Shamp*, 422 N.W.2d 520, 525 (Minn. Ct. App. 1988), *citing Weber v. Anderson*, 269 N.W.2d 892, 895 (Minn. 1978), *review denied* (Minn. June 10, 1988).